



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2020-0561; FRL-10016-63-OGC]

Proposed Settlement Agreements, Clean Water Act and Endangered Species Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Environmental Protection Agency (EPA) Administrator's October 16, 2017, Directive Promoting Transparency and Public Participation in Consent Decrees and Settlement Agreements, notice is hereby given of a proposed stipulated order of partial dismissal to address several claims in a lawsuit filed by Northwest Environmental Advocates in the U.S. District Court for the District of Idaho. On September 24, 2013 the Northwest Environmental Advocates and the Idaho Conservation League (collectively "Plaintiffs") filed an amended complaint bringing claims against the EPA alleging, among other things, that it failed to perform duties mandated by the Endangered Species Act (ESA) to consult with the Fish & Wildlife Service and the National Marine Fisheries Service (collectively "the Services") regarding its actions under the Clean Water Act (CWA) and that EPA failed to complete various mandatory duties under the CWA with respect to various new and revised water quality standards adopted by the Idaho Department of Environmental Quality. EPA seeks public input on the proposed stipulated order of partial dismissal prior to its final decision-making to settle the litigation.

DATES: Written comments on the proposed settlement agreements must be received by [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: You may send comments, identified by Docket ID No. EPA-HQ-OGC-2020-0561, by any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov/> (our preferred

method). Follow the online instructions for submitting comments.

- Mail: U.S. Environmental Protection Agency, EPA Docket Center, Office of the General Counsel Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- Hand Delivery / Courier: EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m. to 4:30 p.m., Monday through Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>

FOR FURTHER INFORMATION CONTACT: Thomas Glazer, Water Law Office (2355A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (202) 564-0908; email address: glazer.thomas@epa.gov

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Stipulated Partial Dismissal

On June 15, 2013, Plaintiffs filed suit in the federal district court for the District of Idaho against the Services. The original complaint alleged that the Services

unreasonably delayed or unlawfully withheld completion of ESA consultation with EPA regarding new and revised water quality standards that were submitted in 1996 and/or 1997. On September 24, 2013, Plaintiffs filed an amended complaint adding various CWA and ESA claims against EPA regarding dozens of Idaho water quality standard submissions dating back to 1994. Broadly speaking, Plaintiffs' claims fell into two categories: claims that EPA failed to consult with the Services on various water quality standard approval actions and claims that EPA failed to complete its mandatory duties under the CWA with respect to various new and revised water quality standards adopted by the State. In April 2015, the Services entered a stipulated dismissal with Plaintiffs, by which they agreed to complete certain ESA obligations. This left EPA as the sole defendant in the case.

On February 28, 2019, the court partially granted EPA's motion to dismiss a number of claims on statute of limitations grounds, dismissing all ESA failure-to-consult claims regarding EPA actions that predated September 24, 2007—6 years prior to filing the amended complaint. The court declined to dismiss any CWA mandatory duty claims, finding that the statute of limitations did not require dismissal because Plaintiffs had alleged an ongoing failure to act by EPA. This left seven discrete claims against EPA alleging a failure to undertake various duties pursuant to the ESA and CWA with regard to Idaho water quality standards.

The parties have negotiated a settlement framework in the form of a stipulated order of partial dismissal. The court would enter the order and retain jurisdiction to construe, carry out, enforce, modify, or resolve any dispute regarding the terms and conditions of the order. EPA and Plaintiffs negotiated a three-year timeline for EPA to complete an effects determination pursuant to 50 CFR 402.14(a) for its May 22, 2008 approval of Idaho's revisions to its salmonid spawning timing procedure and, as appropriate, to request initiation of any necessary ESA section 7 consultation with the

Services. The State has been informed of the timeline and will be an applicant in any ESA consultation. The Order would also resolve Plaintiffs' claim for attorney's fees with an agreement to pay \$37,000.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the obligations of EPA for resolution of the claims contained in the proposed stipulated order of partial dismissal from persons who are not named as original parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed stipulated order of partial dismissal if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the CWA or ESA. Unless EPA or the Department of Justice determines that consent to this proposed stipulated order of partial dismissal should be withdrawn, the terms of the proposed stipulated order of partial dismissal will be affirmed and entered with the court.

II. Public Participation

Written Comments

Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2020-0561, at <https://www.regulations.gov> (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the

web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

The EPA is temporarily suspending its Docket Center and Reading Room for public visitors, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov/> as there may be a delay in processing mail and faxes. Hand deliveries or couriers will be received by scheduled appointment only. For further information and updates on EPA Docket Center services, please visit us online at <https://www.epa.gov/dockets>.

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID-19.

Dated: November 17, 2020.

Steven Neugeboren,
Associate General Counsel.

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